

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of)

Implementation of Section 621(a)(1) of)

the Cable Communications Policy Act of 1984) MB Docket No. 05-311

as amended by the Cable Television Consumer)

Protection and Competition Act of 1992)

COMMENTS OF INC. VILLAGE OF FLORAL PARK

These comments are filed by the Incorporated Village of Floral Park in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Floral Park believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Inc. Village of Floral Park is a village with a population of 15,697. Our franchised cable provider is Cablevision Systems Corporation. Our community has negotiated cable franchises since October 24, 1978.

Our Current Franchise

Our current franchise began on December 2005 and expires in December 2015. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the Inc. Village of Floral Park in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel devoted to educational and government access. Our PEG channel is supported by a portion of the 5% franchise fee. Three other communities share our PEG channel and have similar agreements with the franchisee.

Our franchise contains the following requirements regarding emergency alerts: Franchisee to the extent required by law, rule or regulation shall participate in an emergency alert system. Such facility is made available to the Inc. Village of Floral Park on a shared basis with other municipalities.

Our franchise contains a "most-favored-nations" provision which states the following: In the event that the Municipality grants one (1) or more franchise(s), or similar authorization(s), for the construction, operation and maintenance of any communication facility which shall offer services substantially equivalent to services offered by the System, it shall not make the grant on more favorable or less burdensome terms. If Franchisee finds that the agreement(s) granting said other franchise(s) contain provisions imposing lesser obligations or more favorable terms on the company(s) thereof than are imposed by the provisions of this Agreement, then Franchisee may petition the Municipality for a modification of this Agreement. Franchisee shall be entitled with respect to said lesser obligations or more favorable terms to such modification(s) of this Agreement as may be determined to be necessary to insure fair and equal treatment by this Agreement and said other Agreements.

In the event that a non-franchised multi-channel video programmer/distributor provides service to residents of the Municipality, the Franchisee shall have a right to request Franchise Agreement amendments that relieve the Franchisee of regulatory burdens that create a competitive disadvantage to the Franchisee. In requesting amendments, the Franchisee shall file a petition seeking to amend the Franchise. Such petition shall: i) indicate the presence of a non-franchised competitor(s); ii) identify the basis for Franchisees belief that certain provisions of the Franchise Agreement place Franchisee at a competitive disadvantage; iii) identify the regulatory burdens to be amended or repealed in order to eliminate the competitive disadvantage. The Municipality shall not unreasonably withhold granting the Franchisee's petition and so amending the Franchise Agreement.

Our franchise contains the following insurance and bonding requirements: Franchisee shall purchase and maintain the following levels of general liability insurance during the term of this Agreement that will protect Franchisee and the Municipality from any claims against either or both which

may arise directly or indirectly as a result of Franchisee's performance hereunder: Personal injury or death: \$500,000 per person, \$500,000 per occurrence, property damage: \$500,000 per occurrence, excess liability or umbrella coverage: \$10,000,000.

Franchisee shall indemnify and hold harmless the Municipality, its officers, employees, and agents from and against all losses and claims, demands, payments, suits, actions, recoveries, and judgments of every nature and description, resulting from bodily injury, property damage or personal injury, brought or recovered, by any act or omission of Franchisee, its agents, employees, contractors and subcontractors in the construction, operation, maintenance, service or repair of the communications system or any portion thereof, or of any failure to comply with any law, ordinance, or regulation, or be reason of any suit or claim for royalties, license fees, or infringement of patent rights arising from Franchisee's performance under this agreement. Notwithstanding any provision contained herein and to the contrary, Franchisee shall have no obligation to indemnify or defend the Municipality with respect to any programming provided by the Municipality or from the Municipality's negligence.

Each insurance policy shall bear the name of the Municipality as an additional insured.

All Franchisee insurance policies and certificates of insurance shall stipulate that the coverage afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the Municipality. If any policy is canceled, it shall be replaced forthwith with insurance that meets the requirements of this Agreement so that there is no laps in coverage.

Not later than sixty (60) days after the effective date of this Agreement, Franchisee shall furnish to the Municipality certificates of insurance in conformity with the requirements of this Franchise.

Franchisee shall obtain all insurance required pursuant to this Agreement from companies authorized to do business within the state of New York and approved by the Superintendent of Insurance, which companies shall maintain a rating of at least Best's A-. The Municipality may, at any time after reasonable notice, review Franchisee's compliance with the provisions of this Section. Should the policies or certificates of insurance provided by Franchisee hereunder differ from accepted insurance industry forms, the Municipality shall have the right to review and approve such policies or certificates, provided such approval shall not be unreasonably withheld.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The Municipality, at any time, may make reasonable inquiries related to its regulatory responsibilities concerning the operation of the System. Franchisee shall respond to such inquiries in a timely fashion.

The Franchising Process

The cable system(s) serving our community also serves many adjoining communities: Inc. Village of Bellerose, Inc. Village of South Floral Park and the Inc. Village of Stewart Manor. In 1995, our community worked together with approximately three (3) other communities to issue a cable franchise for the Cablevision Systems Corporation cable company. This allowed the company to quickly obtain franchises in these communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process - to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved

by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: All terms and conditions of this Agreement are subject to Federal and State law and to the rules and regulations of the FCC and the NYSPSC.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: A public hearing is held in accordance with the franchise standards of the New York State Public Service Commission.

In addition to soliciting public input, the public hearing affords the village the opportunity to discuss on-going improvements, maintenance, and construction of the system.

Competitive Cable Systems

Our community has mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in Inc. Village of Floral Park. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met

and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The Inc. Village of Floral Park therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

INC. VILLAGE OF FLORAL PARK

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